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No. 244. 35

IN THE

Supreme Court of the United States.

Brief of Sulkrue for U.S. (mo.)

OCTOBER TERM, 1899.

No. 244.

Filed Oct. 16, 1899

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.,

Plaintiffs in error,

vs.

WIRT ADAMS, State Revenue Agent, &c.

In error to the Supreme Court of Mississippi.

RECEIVED
OCT 16 1899
JAMES H. McKENNEY,
Clerk

MEMORANDUM OF PLAINTIFFS IN ERROR UPON THE DEFENDANT'S MOTION TO ADVANCE.

Although, for the reasons stated below, it would be a great convenience to have this motion denied, yet it must in candor be admitted that every case involving a large amount of state taxes ought to be advanced. Counsel for the plaintiffs in error cannot, therefore, consistently oppose the motion, although it is prayed that the argument be not assigned for an earlier date than the second Monday of January. A supersedeas bond amply protects every interest of the state.

The plea *ad misericordiam* as to the tottering condition of the state buildings and finances is quite overdone in the memorandum submitted in support of the motion. However, no useful purpose can be served by contradiction.

I.

In the present case, the questions involved are of great importance and far-reaching consequence to the Yazoo and Mississippi Valley Railroad Company and to other

railroads and manufacturing corporations in the State of Mississippi, who have invested their capital in reliance upon the pledged faith of the State. The importance of the contract now impaired and nullified and the difficulty of the questions involved cannot be denied, for the Supreme Court of Mississippi on the first hearing of the case ordered two reargruments and took eighteen months to reach a conclusion, and even then the decision was by a divided court, two judges to one, and necessitated the reversal of former decisions.

II.

The subscriber has been retained as counsel in this case only since the suing out of the writ of error from this court. He had expected the aid of the Hon. James Fentress of this bar as senior counsel, but Mr. Fentress has been compelled by reason of ill health to retire from the management of the litigation, and may be prevented from taking any part in the preparation of the brief or in the oral argument. Mr. Edward Mayes, of Mississippi, who conducted the litigation in that State, and who is to lead in the preparation of the brief and on the oral argument, has for several months been afflicted by the serious illness of a son, and has recently been driven from his home in Jackson on account of yellow fever, the same cause that, as the moving papers show (p. 5), has driven the defendant in error also from his home.

In view of these peculiar circumstances, as well as other professional engagements, including several important cases in this court, the undersigned ventures to ask that this case be not set down for an earlier date than January 8th, 1900. The necessary research and the careful

preparation of the printed brief and for the oral argument, in order to assist the court by a thorough presentation of the legal points involved, will require at least until January. The ends of justice ought to be served by the delay, for the time is really necessary for adequate preparation.

There are also pending on the docket other cases from Mississippi involving practically the same questions. In these cases, motions are about to be submitted by our adversaries to dismiss or affirm, and it requires preparation to resist these applications, which have been or are about to be repeated in each case. It would undoubtedly save this court much labor if all the litigation involving practically the same questions as to these Mississippi taxes were directed to be heard in January; and the undersigned will so urge in the briefs on these motions, two of which are now returnable November 6, 1899. The practice of moving to dismiss in each one of these cases tends to impose double labor upon the court.

Washington, D. C., October 16, 1899.

WILLIAM D. GUTHRIE,
Of counsel for plaintiffs in error.